

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHAEL DUPREE, JR.,  
a Colorado Resident;  
MICHAEL DUPREE, SR.; and  
DARLENE DUPREE, his parents,  
Residents of the Country of Austria,

Case No. 10-CV-12094

Hon. Lawrence P. Zatkoff  
Hon. Mag. Mona K. Majzoub

Plaintiffs,

v.

CRANBROOK EDUCATIONAL  
COMMUNITY; JOHN J. WINTER;  
and CHARLES SHAW,

Defendants.

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**PLAINTIFFS' SUR-REPLY TO DEFENDANTS' REPLY  
WHICH DEFENDANTS FILED IN SUPPORT OF THEIR  
MOTION FOR SUMMARY JUDGMENT**



Plaintiffs, Michael Dupree, Jr., Michael Dupree, Sr., and Darlene Dupree, hereby file this Sur-Reply Brief in response to the Reply Brief filed by Defendants, Cranbrook Educational Community, John J. Winter, and Charles Shaw, in support of their Motion for Summary Judgment.

### **BACKGROUND**

This case was originally assigned to Judge Robert H. Cleland. (Exhibit 1, Docket) On August 26, 2010, a scheduling conference was held before Judge Cleland, at which time it was agreed that Plaintiffs could file an Amended Complaint by way of stipulation and order.

On September 24, 2010, Plaintiffs filed an Amended Complaint (Exhibit 1, R. 12; Exhibit 2), and also filed the Stipulated Order allowing Plaintiffs to file the Amended Complaint. (Exhibit 1, R. 13; Exhibit 3) On September 27, 2010, the Court entered the following "Text-Only Order":

TEXT-ONLY ORDER STRIKING as improvidently filed Stipulation and order re: 13 Amended Complaint filed by John J Winter, Cranbrook Educational Community, Michael Sr. Dupree, Michael Dupree, Jr., Darlene Dupree, Charles Shaw. Signed by District Judge Robert H Cleland. (LWag) (Entered 09/27/2010)

(Exhibit 1)

About two weeks later, the case was reassigned from Judge Cleland to Judge Nancy G. Edmunds. (Exhibit 1, R. 14) That same day an Order of Disqualification was entered reassigning the case to this Court. (Exhibit 1, R. 15) On October 25, 2010, this Court issued a Scheduling Order was issued, and on March 2, 2011, Defendants filed their Motion for Summary Judgment. (Exhibit 1, R. 17, R. 21) Plaintiffs timely filed their Response to Defendants' Motion for Summary Judgment on March 22, 2011 (Exhibit 1, R. 22), and Defendants timely filed their Reply to Plaintiffs' Response on April 5, 2011. (Exhibit 1, R. 24)

### ARGUMENT

In their Reply Brief, Defendants argue that Plaintiffs' claims for specific performance and for equitable relief were never properly pleaded. As this Court's docket undisputedly indicates, Defendants had agreed to allow Plaintiffs to file their Amended Complaint, and Defendants filed both the Amended Complaint and the Stipulation. (Exhibit 1, R. 12, R. 13) It appears that Plaintiffs did not attach a proof of service to the filed Amended Complaint, and Plaintiffs recognize that a proof of service is required. However, the Court can take notice that through the Court's PACER ECF system, a copy of the Amended Complaint and the stipulation each may be obtained from the docket, and the Court automatically provides notice to ECF participants of record when an entry or filing is made. (Exhibit 2; Exhibit 3, respectively) Indeed, this is the mechanism by which Defendants were notified on the Court's "Text-Only" entry. (Exhibit 1)

In addition, the "Text-Only Order" striking the stipulation as "improvidently filed" was due to a misunderstanding as to the proper procedure for submitting a proposed order to the Court, and not in any way related to a substantive decision to disallow the filing of Plaintiffs' Amended Complaint. (Exhibit 1) Due to the reassignment of this case to two other judges of this Court which thereafter followed, Plaintiffs inadvertently did not resubmit the stipulation for entry. However, despite this, Defendants were aware of the Amended Complaint and, of course, were well aware that they stipulated to it being filed. Yet, in their Reply Brief, Defendants now seize upon Plaintiffs' inadvertent failure to resubmit the stipulation to the Court and file the proof of service to the Amended Complaint.

Although arguably unnecessary due to Defendants' stipulation, Plaintiffs forthwith shall file a motion for leave to file the Amended Complaint. For the reasons set forth in Plaintiffs'

motion, this Court should grant Plaintiffs leave to file their Amended Complaint, and should likewise deny Defendants' Motion for Summary Judgment, thereby allowing Plaintiffs' Amended Complaint to proceed to trial.

In addition, Defendants argue in their Reply that Plaintiffs should be sanctioned for ultimately concurring with Defendants regarding the dismissal of Plaintiffs' federal law claims. Plaintiffs should not be sanctioned for their actions. To do so would render the requirement of seeking concurrence in a motion mere surplusage and run counter to judicial economy.

### **CONCLUSION**

For the above-stated reasons, as well as for the reasons set forth in Plaintiffs' Response Brief, Plaintiffs respectfully request that this Court deny Defendants' Motion for Summary Judgment, and deny Defendants' any award of sanctions.

Respectfully submitted,

THOMAS, GARVEY, GARVEY & SCIOTTI

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April \_\_, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on April \_\_\_, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF System which will send notification to all ECF participants of record.

Respectfully submitted,

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April \_\_\_, 2011